

ARTINA RUSSELL,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-41

OPINION

This is an appeal of a student expulsion for one academic year based on the student's assault of the principal of the school. The State Board reviewed the matter and issued Opinion No. 00-09 on February 23, 2000, transferring the matter to the Office of Administrative Hearings for "the limited purpose of determining whether Appellant [the student's mother] knowingly waived her right to a hearing before the Board of Education of Montgomery County." Following a hearing on June 6, 2000, the Administrative Law Judge (ALJ) issued a proposed decision on July 21, 2000, concluding that Appellant had knowingly waived her right to a hearing before the local board. A copy of the ALJ decision is attached as Exhibit 1. The parties waived oral argument before the State Board.

Having reviewed the record in this matter, we adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge. Finding that Appellant knowingly waived her right to a hearing, the State Board must also address the other due process issue raised by the Appellant - that her son's due process rights were violated because he has a disability, ADHD.

With respect to the special education issue, in a memorandum dated July 21, 1999, the local superintendent advised the local board that Alexander's school record contained no information "indicating Alexander suffered from ADHD and no information that would suggest a disability." He explained that because the school system had no knowledge that Alexander was a student with a disability before the behavior occurred for which he was disciplined, the usual due process protections available to any regular education student applied. The superintendent also noted that the question of whether Alexander is now in need of special education services due to ADHD should be determined by a screening committee of the local education agency responsible for providing such services.

For the following reasons, we concur with the local superintendent. The Individuals with Disabilities Education Act (IDEA) provides that a child who has not been determined to be eligible for special education and related services but who has committed a disciplinary infraction is entitled to certain due process protections with regard to the discipline if the school system had knowledge that the child had a disability before the behavior that precipitated the disciplinary

action occurred.¹ 20 U.S.C. § 615(k)(8); 34 C.F.R. § 300.527(a); COMAR 13A.08.03.10. A school system is deemed to have knowledge that a child has a disability if (1) the parents have expressed concern in writing to school personnel regarding their child's need for IDEA services; (2) the behavior or performance of the child demonstrates the need for IDEA services; (3) the parents have requested an evaluation of the child under IDEA; or (4) the child's teacher or other school system personnel have expressed concern about the child's behavior or performance to the director of special education or other school system personnel. 34 C.F.R. § 300.527(b); COMAR 13A.08.03.10B.

Because the record does not disclose that any of the above criteria were met in this case, the school system is not deemed to have had knowledge that Alexander was a student with a disability prior to the behavior for which he was disciplined. The school system had no record of Alexander's ADHD, and Appellant never requested that the school system evaluate Alexander to see if he were eligible for IDEA services.² Thus, we find that Alexander was not entitled to more due process protection than that which is afforded to any non-disabled student. *See* 34 C.F.R. § 300.527(c)(i); COMAR 13A.08.03.10.

Moreover, whether Alexander is now in need of special education services due to ADHD is a matter to be determined by a screening committee of the local education agency where Alexander is enrolled in school. However, the record in this case is unclear as to where Alexander is currently enrolled. Appellant attempted to enroll Alexander in public school in Prince George's County shortly after the expulsion decision. The Prince George's system invoked the statutory exception in § 7-305(d)(5) of the Education Article allowing the Prince George's County superintendent to preclude Alexander's enrollment due to his expulsion in Montgomery County. The record does not disclose whether Appellant has officially withdrawn Alexander from enrollment in Montgomery County. It is therefore up to Appellant to pursue the matter of special education services in the school system where Alexander is enrolled.

CONCLUSION

Because we find no due process violations or other illegalities in the proceedings, we affirm the decision of the Board of Education of Montgomery County.

Philip S. Benzil
President

¹Those procedural safeguards include a manifestation determination to ascertain the relationship between the child's disability and the behavior that resulted in disciplinary action. *See* 34 C.F.R. § 300.523; COMAR 13A.08.03.08.

²The mere fact that Appellant claims that Alexander has ADHD does not necessarily mean that he would be found to be a student with a disability under IDEA. *See* 34 C.F.R. § 300.7; COMAR 13A.08.03.10.

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Judith A. McHale

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

September 26, 2000